CRP 73/2007
BEFORE
HON'BLR MR JUSTICE AMITAVA ROY

Heard Mr MK Choudhury, learned Senior counsel for the petitioner and Mr PS Deka , learned counsel for the respondent.

The challenge is against the order dated 2.1.2007 passed by the Additional District Judge, Jorhat in Title Appeal No.7/2006 rejecting an application filed by the petitioner /appellant under Order 41 Rule 27 of the Civil Procedure Code (hereinafter referred to as 'Code') to introduce a money receipt purportedly issued by the Opposite party as additional evidence in the appeal.

The facts in short forming the factual background would be necessary. The Opposite party-plaintiff had instituted Title suit No.36/1996 in the court of the Assistant District Judge, Jorhat against the petitioner and two others praying for a decree inter alia for eviction from the suit premises described in the plaint amongst others on the ground of default in payment of rent. The month from which the default allegedly occurred was identified to be September,1995.

The petitioner in his written statement while admitting the tenancy pleaded that he paid the rent as due in law, but was unsuccessful in doing so for the month of September,1995 inspite of his repeated
endeavours. He thus started depositing rent from the month of September,1995 in Court. According to him, the rent used to be paid by cheques. For the month of September,1995 the same mode of payment was adhered to. The plaintiff opposite party however, refused to accept the cheque tendered. Thereafter the petitioner forwarded another cheque to him by registered post with A/D. Neither the cheque was returned to him nor was any receipt issued therefor. After the issues were framed witnesses were examined and the learned trial court decreed the suit of the Opposite party plaintiff.

Being aggrieved the petitioner is in appeal as above.

During the pendency of the appeal, he filed an application under Order 41 Rule 27 of the Code praying for leave of the appellate Court to introduce a money receipt dated 7.10.95 said to be issued by the Opposite party plaintiff as an acknowledgement of receipt of payment of rent for the month of September,1995. The petitioner stated that the said document could not be produced inspite of his best endeavours at the time of adducing evidence. He maintained that the failure to produce the money receipt was neither willful nor out of his negligence .

The prayer was resisted by the opposite party plaintiff contending in substance that in view of the pleaded stand of the petitioner defendant in his written statement and the evidence on record, the prayer was

not sustainable in law. The learned lower appellate court by the impugned order sustained the objection. Being aggrieved, the petitioner is before this Court seeking invocation of its supervisory jurisdiction under Article 227 of the Constitution of India.

Mr Choudhury has emphatically urged that having regard to the underlying purpose of Order 41 Rule 27 of the Code the petitioner's prayer ought to have been allowed, it being evident from the application that he was rendered unable to produce the money receipt for no default of his inspite of exercise of due diligence. According to him, clause 1(aa) of Order 41 Rule 27 was clearly applicable to the facts of the present case and therefore in the interest of justice, the impugned order ought to be interfered with.

Mr Deka in reply, has urged that not only the petitioner's application do not disclose his diligence as contemplated under Order 41 Rue 27, the primary facts on the basis of which the prayer is structured are belied by his assertions in his written statement. The learned counsel drew the attention of this

Court to the relevant portion of the written statement in support of his submission.

The rival arguments have been duly considered. It is more than apparent from the application filed under the above provision of the Code that untraceability of the money receipt at the appropriate time is the reason

cited by the petitioner for his failure to introduce the same in evidence. This pre supposes that the money receipt dated 07.10.95 had been received by him , but could not be located at the time of his evidence. It is intriguing that inspite thereof the petitioner in his written statement in paragraph 10 thereof had in unequivocal terms averred that the first cheque carrying the rent and offered to the opposite party defendant after having been refused a second cheque for the same amount had been dispatched by him(Opposite party/plaintiff) by registered post , but no receipt therefor had been issued by the latter. The petitioner's case in his pleading is not that the rent receipt for the month of September,95 had in fact, was issued by the Opposite party plaintiff and received by him. In course of the trial as well, no attempt was made by the petitioner to either amend the above stand in his written statement .

Order 41 Rule 27 of the Code provides for eventualities in which additional evidence can be allowed to be adduced at the appellate stage. Suffice it would be to mention that considering the stage of the proceeding at which the prayer for adducing additional

evidence has to be evaluated , the approach logically has to be strict and circumspect. The prayer for adducing additional evidence unless is reinforced by essential facts to constitute one or more of the grounds mentioned in Order 41 Rule 27 of the Code ought not to be entertained readily.

I have carefully scrutinized the discussion recorded by the learned courts below and the reasons in support of the conclusions arrived at . In the above factual premise, no perversity or absurdity therein is discernible so as to warrant invocation of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petitioner has failed to demonstrate that the prayer made is cognizable in terms of Order 41 Rule 27. The petition thus being devoid of merit is dismissed. It is, however, made clear that the observations made herein are for the limited purpose of disposing of this petition and in no way would influence the learned lower appellate court in deciding the appeal having regard to the pleadings of the parties and the evidence on record. No costs.